

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 454 of 2001 (SS)
(Old No. 19627 of 1996)

1. Chandan Singh son of Sri Dhan Singh
Officers colony, Harkot, Pithoragarh
2. Lok Nath s/o Sri Bageloo, r/o G.I.C.
Road, Pithoragarh Petitioners

Versus

1. State of U.P.
2. District Magistrate, Pithoragarh
3. Vikas Aayukta, Laghu Evam Gramin Udyog
Uttarakhand, Srikot, Srinagar, Pauri Garhwal
4. General Manager, District Industries Centre
Pithoragarh Respondents

Sri Alok Mehra, Advocate for the petitioners
Standing Counsel for the respondents.

Dated: 24.3.2006

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the termination order dated 18.5.1996 passed by the respondent no. 3.

Briefly stated that the petitioners were appointed as Orderly/Peon in the District Industrial Centre, Pithoragarh on 4.1.1996 but respondent no. 3 terminated the service of the petitioners vide order dated 18.5.1996. The grievance of the petitioners is that before passing of the termination order no opportunity was given to the petitioners for hearing and as such

the order passed by the respondent no. 3 is against the principle of natural justice.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd: (1993) 3 SCC 259 has held as under:

“It is a fundamental rule of law that no decision just be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural Justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black’s Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country.....they include.....rights capable of being enforced or redressed in a civil action.....In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be

informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural Justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging

action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.”

The Apex Court in the case *Shrilekha Vidyarthi vs. State of U.P.* AIR 1991 SC 537 has held as under:

“It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is very state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

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Every State action must be informed by reason and it follows that an act uninform by reason, is arbitrary. Rule of law

contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you.' This what men in power must remember, always.

Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19 : (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of the Constitution"

Tenth Edn. Introduction ex.) "Law has reached its finest

moments” stated Douglas, J. in United States v. Wunderlick (1951-342 US 98: 96 Law Ed 113), “When it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield stated it in classic terms in the case of John Wikes (1770-98 ER 327) “means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful.”

It has been held by a Division Bench of Allahabad High Court consisting of Hon’ble Mr. Justice M. Katju and Hon’ble Mr. Justice U.K. Dhaon that a temporary employee is also entitled for all benefits. It has been observed as under:

“ The traditional concept has been that a temporary employee has no right to the post vide State of U.P. v. Kaushal Kishore 1991 (62) FLR 350 (SC) and Triveni Shanker Saxena vs. State etc. 1992 (64) FLR 330 (SC). However, in our opinion, this traditional concept has now to stand modified in the light of the new interpretation of Article 14 to the Constitution given by the Supreme Court in the Seven Judge Constitution Bench decision in Meneka Gandhi v. Union of India AIR 1978 SC 597. It has been held in that decision that Article 14 is not only directed against discrimination but also against arbitrariness.

Hence, in our opinion, the traditional concept that a temporary employee has no right to the post has now stands modified in view of the new interpretation of Article 14 in Maneka Gandhi's case and it can no longer be treated as an absolute concept."

In view of the above, liberty is given to the petitioner to move a fresh representation to the respondents, who shall decide the same within two months after obtaining certified copy of this order. In the mean time if posts are still vacant in the department, the appointment of the petitioner may be considered.

Accordingly, the writ petition is disposed of. No order as to costs.

Dated: 24.3.2006

Rajesh Tandon, J.